IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTEENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 9958 of 2004

Between:

A.Sammaiah, S/o A.Veeraswamy,
R/o H.No.3-9-566, Reddy Colony, Hanamkonda.

..... PETITIONER

AND

1 The Commissioner, Municipal Corporation, Warangal.
2 The City Planner, Warangal Municipal Corporation, Warangal.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ, Order or direction particularly one in the nature of Writ of Mandamus declaring the proceedings No.TP/2/2003, Dated 29-07-2003 of the Second Respondent is arbitrary, illegal, without jurisdiction and violative of Arts.14,19 and 21 of the Constitution of India.

Counsel for the Petitioner: MR.K.GOVIND

Counsel for the Respondents: MR.K.VENUGOPAL REDDY

The Court made the following ORDER:

ORDER:

This writ petition is filed seeking a declaration that the proceedings dated 29.07.2003 issued by the second respondent-City Planner, Warangal Municipal Corporation, Warangal, as arbitrary and illegal.

The case of the petitioner is that he is the owner and possessor of the house bearing No.3-9-566, Reddy Colony, Hanamkonda which was constructed in pursuance of the permission granted by the Warangal Municipality dated 02.12.1993. While so, the second respondent issued the impugned proceedings dated 29.07.2003 directing the petitioner to submit the documents of the building, permission copy etc., failing which, it will be construed that the petitioner has occupied the lane illegally and constructed the building unauthorisedly. The petitioner states that thereafter all the required documents were submitted on 05.08.2003, however, the respondents have not passed any order so far, but in the meanwhile, they have been interfering with the possession of the petitioner. Hence, this writ petition seeking the above relief.

In the counter-affidavit filed on behalf of the respondents it is stated that the plea taken by the petitioner that he has not encroached into the service lane on the backside of his house is not correct and that the documents produced by the petitioner will be verified and appropriate orders will be passed as per law and if necessary, the encroachment will be removed.

Since, as on today, the respondents have not passed any order as such, I am not inclined to go into the correctness of the allegation as to the encroachment. It is for the respondents to consider the explanation already offered by the petitioner and to pass appropriate orders. In case any adverse finding is recorded, it is always open to the petitioner to challenge the same by working out the appropriate remedy.

However, the learned counsel for the petitioner contends that as per the provisions of the Hyderabad Municipal Corporation Act, 1955, the second

respondent is not competent to issue the impugned proceedings on the ground of alleged encroachment. The petitioner is granted liberty to raise the said objection also before the second respondent, in which event, the same shall be considered and appropriate orders shall be passed in accordance with law.

The writ petition is accordingly disposed of granting leave and liberty to the petitioner to submit an additional explanation within a period of four weeks from today, in which event, the respondents shall consider the same as well as the explanation already offered by the petitioner on 5-8-2003 together with the documents and appropriate orders shall be passed in accordance with law. Till such orders are passed, *status quo*, obtaining as on today, as to the nature and possession of the property in question, shall be maintained. No costs.

_____

G. Rohini, J

Date: 17.01.2005

Va/bj

To

1 The Commissioner, Municipal Corporation, Warangal.
2 The City Planner, Warangal Municipal Corporation, Warangal.

3 Two CD Copies